IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5963 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAZIRKHAN YUSUFKHAN

Versus

STATE OF GUJARAT

Appearance:

MR BJ JADEJA for Petitioner

MS DARSHANA PANDIT, AGP instructed by

M/S PATEL ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/09/2000

ORAL JUDGEMENT

The petitioner challenges the order of the Gujarat Revenue Tribunal, rejecting the Revision Application of the petitioner and upholding the order of

the Deputy Collector, Olpad Sub-Divn. Surat, in Ceiling Appeal No. 73 of 1987, passed on 30th April, 1988, by which the petitioner's appeal was dismissed and the order of the Mamlatdar made on 30th April, 1987 in Ceiling Case No. 250/76 declaring surplus land was upheld.

It has been contended on behalf of the petitioner that the Tribunal did not consider the provisions of Second proviso to Section 8 of the Gujarat Agricultural Lands Ceiling Act, 1960, under which nothing in sub-section (1) of Section 8 applied to any transfer of land by way of gift or partition made on or after 24.1.1971 to a son who was major on that date. It was also submitted that the Tribunal did not even consider the fact that the Deputy Collector had taken into account statement which was recorded on 24.12.1981 in the earlier proceedings without any opportunity being given to the petitioner of cross-examining that person in the proceedings in question. It was also submitted that the Tribunal did not take note of the fact that the Canal Officer was not called to give evidence.

The Tribunal while considering the question as to whether there was a family arrangement, observed in paragraph 6 of its award that this was not a case of just a family arrangement, but an exchange and that the mutation entry on the record made a mention that it was a "venchani" i.e. family partition. It was held that this was specifically hit by the provisions of Section 8(1) of the Act, under which it was, inter-alia, provided that after 24.1.1971 but before the specified date, where any person has transferred by way of gift etc. or partitioned any land held by him then notwithstanding anything contained in any law for the time being in force, such partition shall unless it is proved to the contrary, be deemed to have been made in anticipation of and in order to defeat the object of the said Act. It will however be seen that under the Second proviso to sub-section (1) of Section 8, it has been laid down that nothing in sub-section (1) of Section 8 shall apply to any transfer of land by way of gift or partition made on or after 24.1.1971 to a son who was major on the that date. The question of the partition having been effected as per Entry No. 476 referred to in village form No.6 at Annexure "A" to the petition in favour of five sons by Shakinabanu does not appear to have been considered in light of the Second proviso to sub-section (1) of Section 8 of the said Act by the Tribunal. Even the contention regarding not calling the Canal Officer to give evidence nor about the statement recorded in the earlier

proceedings on 24.12.1981 having been considered without an opportunity being given to the petitioner of cross-examining that person, have been gone into by the Tribunal. It would therefore be appropriate that the Tribunal reconsider the matter in context of these contentions sought to be raised on behalf of the petitioner and such other legal contentions as may be raised before the Tribunal and take a fresh decision in the matter in accordance with law expeditiously. Rule is made absolute accordingly with no order as to costs.

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